

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:05CV215

HENRY FLOYD GILCHRIST, Pro Se,)
On Behalf of the People of Veterans)
Affairs,)

Plaintiff,)

Vs.)

ORDER OF DISMISSAL

WILLIAM M. CATOE, U.S. Magistrate)
Judge, S.C.; G. ROSS ANDERSON, U.S.)
District Judge, S.C.; KATHALEEN)
ODDO, Veterans Affairs Counsel,)
Roanoke, VA; MELBA BANKS, Chief)
of Chaplains, VA Hospital; JANICE)
MARSH, EEO Officer, VA Hospital;)
JAMES SAMS, Retired Chief of)
Chaplains, VA; and VETERANS)
ADMINISTRATION, South Carolina)
Office,)

Defendants.)

THIS MATTER is before the Court on the Plaintiff's motion to proceed without the prepayment of fees, his affidavit in support thereof and his proposed complaint.

"Federal courts have statutory power under 28 U.S.C. § 1915 to authorize commencement of civil actions *in forma pauperis*." ***DeBlasio v. Gilmore*, 315 F.3d 396, 398 (4th Cir. 2003).**

Because the Court finds the Plaintiff has established the inability to pay and a lack of assets, he will be allow to proceed without the prepayment of filing and other fees. ***Id.*, at 399.** The motion will be granted but the complaint will be filed and dismissed as frivolous.

According to the complaint and the documents attached thereto, the Plaintiff resigned from his employment as a chaplain in training at the Veteran's Administration in Asheville, North Carolina, in March 1998 after receiving a 30-day probationary period. It appears that he has attempted to litigate this matter since that time in several different arenas. On May 15, 1998, the undersigned dismissed an action brought by the Plaintiff based on these same facts because he had failed to file a complaint with the Equal Employment Opportunity Commission (EEOC). ***Gilchrist v. Sams*, Civil No. 1:98cv68**. One year later, the Plaintiff attempted to bring another lawsuit against one of the same Defendants in the previous action, and that action as well was dismissed as frivolous. ***Gilchrist v. Galloway*, Civil No. 1:99cv85**. He has likewise been unsuccessful in litigating these facts in the District of South Carolina. ***Gilchrist v. Dep't of Veterans' Affairs*, 57 Fed. Appx. 576 (4th Cir. 2003)**.

Now he seeks to bring an action against various individuals including a federal magistrate judge and a district court judge in South Carolina. In the complaint, he refers to himself as "the People," demands a "full scale criminal investigation," and discloses the following facts:

1. He has filed other cases in the United States District Court for the District of South Carolina involving the same allegations as made in this action.
2. He was sentenced in the State of South Carolina to a term of imprisonment after pleading guilty to a charge of assault with intent to kill.
3. This criminal conviction was used by the Defendant to support its decision to terminate his employment.
4. At least one other case in the District of South Carolina was dismissed because the Plaintiff resigned from that employment, not because he was fired.

5. In 1996 he was arrested for threatening to kill a federal court judge and, according to the Plaintiff, he felt betrayed by that judge.

See, generally, Complaint, filed May 19, 2005.

This Court has an obligation to conduct a careful review of *pro se* complaints prior to filing in order to ascertain whether the complaint has legal merit. ***Neitzke v. Williams*, 490 U.S. 319, 325 (1989).** The claims alleged in this complaint stem from the March 1998 employment decision. As such, any time within which any cause of action could have been sued upon has long since expired. Moreover, even if timely, the allegations do not state a claim.

Section 1915 also provides, in pertinent part, that “[n]otwithstanding any filing fee, or any portion thereof, that may have been paid, the court *shall dismiss the case at any time* if the court determines that . . . the action [] is frivolous or malicious [or] fails to state a claim on which relief may be granted” **28 U.S.C. § 1915(e)(2) (emphasis added).** Under this statutory proscription, the district court must dismiss such a case and it is the intent of Congress that such dismissals occur prior to service of the complaint on defendants. ***Cochran v. Morris*, 73 F.3d 1310, 1315 (4th Cir. 1996); *White v. White*, 886 F.2d 721 (4th Cir. 1989).** “Legally frivolous claims are based on an ‘indisputably meritless legal theory’ and include ‘claims of infringement of a legal interest which clearly does not exist.’” ***Adams v. Rice*, 40 F.3d 72, 75 (4th Cir. 1994) (quoting *Neitzke*, *supra*, at 327).**

This standard encompasses complaints that are either legally *or* factually baseless. The statutory language dictates a high degree of deference to the discretion of district courts. A claim can be dismissed whenever a district court is “satisfied” the claim is frivolous. Moreover, the term frivolousness itself contemplates deference because “as a practical matter, it is simply not susceptible to categorical definition.”

Cochran, supra, at 1316 (quoting *Adams, supra*, at 74) (other citations omitted). Having read the complaint and the attachments thereto, the undersigned finds the allegations of the complaint are frivolous and most likely designed to harass. Moreover, the facts, accepting them as alleged in the complaint, assert allegations which are "clearly baseless" and, therefore, factually frivolous. *Brown v. Briscoe*, 998 F.2d 201, 203 (4th Cir. 1993) (citing *Denton v. Hernandez*, 504 U.S. 25 (1992)); *see also, White v. Gregory*, 1 F.3d 267 (4th Cir. 1993).

IT IS, THEREFORE, ORDERED that the Plaintiff's motion to proceed without the prepayment of fees is hereby **GRANTED**; and

IT IS FURTHER ORDERED that the complaint shall be filed and dismissed as frivolous without the service of process.

Signed: June 20, 2005

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', written over a horizontal line.

Lacy H. Thornburg
United States District Judge

